4 December 2018

Terms of reference of the common backstop to the Single Resolution Fund

<table>
<tr><td>Providers and form</td><td colspan="2">European Stability Mechanism (ESM) to provide the common backstop on behalf of the euro area, in the form of a revolving credit line to the Single Resolution Fund (SRF). Non euro area participating Member States to provide parallel revolving credit lines.</td></tr>
<tr><td>General voting rules</td><td colspan="2">The standard voting procedure for all decisions referred to in the Terms of Reference is unanimity. We endeavour to find an agreement on an emergency voting procedure as set out in the ESM Treaty, while respecting national (constitutional) requirements.</td></tr>
<tr><td rowspan="2">Size of the credit line</td><td>Size and nominal cap during the steady state</td><td>✓ Nominal cap to be set above the initial size and to be decided by the ESM Board of Governors (BoG) at the latest at the time of the ESM Treaty change.
✓ Nominal cap may be adjusted by the ESM BoG.
✓ Size aligned with the target level of the SRF at the end of the transitional period (end-2023).
✓ Upon notification by the Single Resolution Board (SRB) or as part of a regular review, size adjusted by the ESM Board of Directors (BoD) in order to align it with the target level of the SRF within the nominal cap.</td></tr>
<tr><td>Size during the transitional period</td><td>Aligned with the actual level of the SRF[1], increased every year with the collection of ex-ante contributions.</td></tr>
<tr><td>Relationship with other ESM instruments</td><td colspan="2">Direct Recapitalisation Instrument (DRI) of the ESM to be replaced by the common backstop at the time it is introduced.</td></tr>
<tr><td>SRF uses</td><td colspan="2">Common backstop to cover all possible uses of the SRF according to the current regulation, including liquidity provision, subject to, where needed, adequate safeguards, to be discussed in 2019. These safeguards should be without prejudice to the existing legal competences of the ECB and the SRB.</td></tr>
<tr><td>Equivalent treatment</td><td colspan="2">✓ Participation of non-euro area Member States on equivalent terms.
✓ Maximum available amount under the ESM credit line and parallel credit lines from participating non-euro area Member States to be proportional to their respective ex-ante contributions to the SRF.
✓ Backstop Committee, supported by a Sub-Committee, to ensure sharing of information and timely coordination of respective decisions.
✓ Representatives of participating non-euro area Member States to attend the ESM BoG and BoD as observers on matters regarding the common backstop. Same access to information as euro area Member States.</td></tr>
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[1] It will not take into account possible disbursements from the SRF.

Maturity of the loans and pricing	**Maturity**	As a rule, maturity of **3 years**. Possible extension by a maximum of 2 years if requested by the SRB and to be **granted by the ESM BoD**. If threat to Euro Area financial stability is assessed by the SRB, initial maturity can be set at 5 years upfront by the BoD.
	Pricing	Margin of 35 bps in the initial 3 years; Step-up margin of 15 basis points after 3 years.
Reviews and permanence of the legal framework[2]	2 types of reviews: ✓ **regular review at least every 3 years**; ✓ **comprehensive review every 10 years**. Backstop automatically renewed unless discontinued by the ESM governing bodies ✓ Member States can notify the other parties during two months following the entry into force of changes to the framework that it deems to be fundamental. Other parties can bring the case before the Court of Justice of the European Union (CJEU) to contest this interpretation during one month following the notification. Comprehensive review of the common backstop triggered after the ruling by the CJEU that a fundamental change of circumstances has taken place or if no Member State has contested to the CJEU. Decision required to continue the common backstop.	
General safeguards	**Preferred creditor status**	Yes.
	Pledges in favour of the ESM	Yes[3].
	Acceleration clause	Yes[4].

[2] The permanence of the legal framework is defined along the lines of Article 9 of the IGA. It will be operationalised in the context of the common backstop, to be laid down in the relevant ESM guideline. Further work will take place in 2019, taking into account the key elements of the Banking Package.

[3] The modalities will be defined in 2019 and the impact on the SRB's borrowing capacity will be further assessed.

[4] In the event of a default by the SRB, the ESM and participating non-euro area Member States have the right to declare all or parts of any outstanding loan amounts due and payable.

Approval of disbursements	✓ Decisions by the BoD on a case-by-case basis (see criteria below), while respecting national constitutional requirements. ✓ As a rule, maximum 12 hours as from the SRB's request. In exceptional cases, especially in the case of a particularly complex resolution operation, the ESM Managing Director (MD) might agree to lengthen the deadline up to 24 hours. ✓ Conditional decision by the BoD taken before the adoption of the resolution scheme on the basis of all relevant information while respecting mandatory legal confidentiality requirements. ✓ We endeavour to find an agreement on an emergency voting procedure as set out in the ESM Treaty, while respecting national (constitutional) requirements. ✓ Possibility enshrined in the ESM Treaty that the BoD decides unanimously on a time-limited delegation to the ESM MD.
Criteria for disbursement	✓ Recourse to the common backstop is of last resort. ✓ The principle of fiscal neutrality over the medium term is respected[5]. ✓ Full compliance with the Single Resolution Mechanism (SRM) Regulation and the Bank Recovery and Resolution Directive (BRRD). ✓ Availability of requested funds. ✓ Compliance with the obligation to transfer contributions to the SRF. ✓ No default on borrowings under the facility or other borrowings for which a satisfactory plan has not been presented. ✓ Permanence of the legal framework (in the absence of interim measures by the CJEU). Criteria to be assessed by the respective institutions[6] (as much as possible on a regular basis). Assessment to be presented to the BoD. Disbursements under the common backstop to be approved by the ESM Board of Directors guided by these criteria.

[5] Material litigation issues which would impact the SRF's repayment capacity will be taken into account as one element when conducting the repayment capacity assessment under the condition of fiscal neutrality in the medium term.
[6] The institutions will be involved according to their roles and competences as foreseen in the EU legal framework and the ESM Treaty. The exact allocation of responsibilities among institutions will be clarified on this basis in 2019.

Early introduction	At the latest by the end of the transition period the common backstop will be established. The backstop will be introduced earlier provided that sufficient progress has been made in risk reduction to be assessed in 2020. We endeavour to find an agreement on limited Intergovernmental Agreement (IGA) changes. Risk reduction requirements will be commensurate with the level of ambition of the common backstop in the transition period compared to that of the steady state. The political decision on the early introduction of the backstop will be informed by the assessment of the institutions and competent authorities in 2020 including with respect to minimum requirement for own funds and eligible liabilities (MREL) build-up and trend in non-performing loans (NPLs) reduction. This assessment will be made against the aim of 5% gross NPLs, and 2.5% net NPLs or adequate provisioning, for all SRB banks and progress thereto. Banks should build up subordinated bail-in buffers steadily in line with the 2024 targets and 2022 intermediate targets. There should be appropriate monitoring by the competent authorities to assess progress. As regards NPLs reduction, competent authorities define individual strategies for the reduction of NPL stocks for relevant banks. The SRF should be able to access the backstop for banks of all participating Member States. In case these aims are not met, Member States will undertake specific efforts also involving their insolvency/debt enforcement regimes to reach these goals in a short period of time.